

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

**UNITED STATES**

**v.**

**ELIAS NICK COSTIANES, JR.,**

**Defendant.**

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**Case No. JKB-21-458**

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**JOINT MOTION REQUESTING GRANT OF 28 U.S.C. § 2255 MOTION  
AND RESENTENCING**

The United States of America and the Defendant/Petitioner Elias Nick Costianes, Jr., hereby jointly request that the Court (1) grant Mr. Costianes's 28 U.S.C. § 2255 motion challenging his sentence on grounds of ineffective assistance of counsel, (2) vacate his sentence, and (3) schedule a resentencing hearing. In support of this motion, Mr. Costianes states the following:

1. On June 9, 2023, pursuant to a plea agreement, Mr. Costianes pled guilty to one count of possession of a firearm by an unlawful user of a controlled substance in violation of 18 U.S.C. § 922(g)(3). On September 25, 2023, the Court sentenced Mr. Costianes to 24 months' incarceration.

2. On October 17, 2023, Mr. Costianes filed a pro se motion pursuant to 28 U.S.C. § 2255, alleging ineffective assistance of counsel. Specifically, Mr. Costianes's § 2255 petition alleges that trial counsel was ineffective in violation of the Sixth Amendment for failing to adequately communicate and advise Mr. Costianes during plea negotiations and for failing to adequately present mitigating evidence—including the impact of a brain injury resulting from a

2020 car accident that affected his cognitive functioning and led to increased drug use and more— at sentencing.

3. On December 13, 2023, the Court appointed the Office of the Federal Public Defender to represent Mr. Costianes on the § 2255.

4. Thereafter, the Office of the Federal Public Defender retained Dr. Jonathan DeRight to evaluate Mr. Costianes's mental health. On May 7, 2024, after conducting this evaluation, Dr. DeRight produced a report concluding that Mr. Costianes suffered from a concussion (triggered by a serious car accident) and bipolar II disorder—which, when combined, likely contributed to his drug abuse. Despite this setback, Dr. DeRight's report also gives a detailed accounting of the day-to-day caregiving support that Mr. Costianes (as a sole caretaker) provides his sister, who has advanced Parkinson's disease (Stage 4). The Office of the Federal Public Defender shared this report with Assistant United States Attorney P. Michael Cunningham.

5. The parties now agree that trial counsel provided ineffective assistance of counsel in violation of *Strickland v. Washington*, 466 U.S. 668, 674 (1984) for (1) failing to investigate and develop (for sentencing) mitigating evidence about Mr. Costianes's bipolar disorder combined with his concussion and its connection to his substance abuse, and (2) failing to present detailed mitigating evidence about Mr. Costianes's indispensable role as the sole caretaker of his sister, who is so severely disabled that she needs Mr. Costianes's assistance with practically all daily tasks (eating, walking, showering, and using the bathroom). Therefore, the parties have prepared this joint motion to request that the Court (1) grant Mr. Costianes's § 2255 motion on the grounds that trial counsel was ineffective at sentencing, (2) vacate Mr. Costianes's sentence, and (3) reschedule a resentencing hearing.

